



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, OPR

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed July 30, 2019, in which the Landlord requested an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on July 4, 2019 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was scheduled for 9:30 a.m. on September 27, 2019. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:54 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he personally served the Tenant with Notice of the hearing and his application on July 31, 2019. The Landlord confirmed that his adult daughter, M.C., witnessed service. I find the Tenant was duly served as of July 31, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's

submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

The Landlord testified that the served the Tenant in person on July 31, 2019.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation for unpaid rent?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord provided a copy of the residential tenancy agreement in evidence which confirmed that this tenancy began December 1, 2017. Monthly rent is \$1,275.00 and the Tenant paid a security deposit of \$250.00.

The Tenant failed to pay rent for July 2019 following which the Landlord issued the Notice. The Tenant did not pay the outstanding rent within five days of being served the Notice and failed to apply for Dispute Resolution.

The Landlord testified that the Tenant paid \$300.00 leaving \$975.00 outstanding for July. The Landlord testified that the Tenant paid a further sum of \$800.00 at a later date, such that \$175.00 remains outstanding for July.

The Landlord also stated that the Tenant also failed to pay rent for August and September such that the sum of \$2,725.00 remains outstanding for rent for July, August and September 2019.

### Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find that monthly rent was payable in the amount of \$1,275.00. I further find that the Tenant failed to pay rent when rent was due in breach of section 26 of the *Act*.

I also find the Tenant was served the Notice on July 4, 2019. Section 46 provides that a Tenant has five days from the date of service in which to pay the outstanding rent or file to dispute the Notice.

I further find that the Tenant did not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Consequently, the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I accept the Landlord's testimony regarding the Tenant's failure to pay rent for the months identified and therefore find that the Landlord has established a total monetary claim of \$2,725.00 comprised of outstanding rent in the amount of \$175.00 for July 2019, \$1,275.00 for August 2019 and \$1,275.00 and for September 2019.

Pursuant to sections 38 and 67 of the *Residential Tenancy Act* I order that the Landlord retain the Tenant's security deposit of \$250.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$2,475.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 30, 2019

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Residential Tenancy Branch